

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
SEPTEMBER 11, 2003
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Kearsley called the meeting to order at 6:34 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Vic Peterson, Environmental & Community Development Director/Building Official; Thomas Gorham, Senior Planning Consultant; Ed Knight, Interim Planning Division Manager; Scott Albright, Senior Planner; Paul Adams, Parks and Recreation Director; Barbara Cameron, Contract Grant Writer; Julia James, Administrative Services Director; Claudio Sanchez, Acting City Engineer; Mike Teruya, Planning Manager, and Lisa Pope, City Clerk

FLAG SALUTE

Ed Knight led the Pledge of Allegiance.

Mayor Kearsley conducted a moment of silence in memory of the victims of the 9-11-01 disasters.

CLOSED SESSION REPORT

Public Comment on Closed Session Items

City Attorney Hogin reported that the Council met in closed session at 5:40 p.m. to discuss the following items:

Existing litigation per Government Code Section 54956.9 (a):

1. Chicksands Properties LTD. v. City of Malibu et al.
Los Angeles County Superior Court Case No. BS072081
2. City of Malibu v. California Coastal Commission (Streisand Center Coastal

Permit)

- Los Angeles County Superior Court Case No. BC230410
3. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)
Los Angeles County Superior Court Case No. SS011355
 4. City of Malibu v. California Coastal Commission (AB988 / LCP)
Los Angeles County Superior Court Case No. SC074641
Related cases (city named as a party in interest):
 - a. Rick Appel v. California Coastal Commission
Case No. SC074658
 - b. Ralph Herzig v. California Coastal Commission
Case No. SS011382
 - c. Land Use Preservation v. California Coastal Commission
Case No. SS011388
 - d. Riverview Farm Associates v. California Coastal Commission
Case No. SS011383
 - e. Brian Sweeney v. California Coastal Commission
Case No. SS011387
 - f. Trancas-PCH v. California Coastal Commission
Case No. SC074640
 - g. Tuna Ridge v. California Coastal Commission
Case No. SC011381
 - h. Land Use Preservation Defense Fund v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011388
 5. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)
Ventura County Superior Court Case No. CIV 216938
 6. City of Malibu / Geffen v. Access for All / Coastal Commission et al
Los Angeles County Superior Court Case No. BC277034
 7. United States of America ex rel. Darian v. Accent Builders inc. et al.
United States District Court Case No. CV00-10255-FMC(JWJx)
 8. Malibu Township Council v. City of Malibu II (28-car garage)
Los Angeles County Superior Court Case No. BS079965
 9. Marine Forest Society v. California Coastal Commission Case No. 00AS00567 (Sacramento Superior Court) (Amicus)
 10. Rubens v. City of Malibu
Los Angeles County Superior Court Case No. SC060331
 11. Silver v. City of Malibu
Los Angeles County Superior Court Case No. BS081960
 12. Sprint v. City of Malibu et al
United States District Court Case No. SACV02660 DOC (MLGx)
 13. Sweeney et al v. City of Malibu
Los Angeles County Superior Court Case No. SS011602
 14. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu
Los Angeles County Superior Court Case No. BS0735585
 15. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu

- Los Angeles County Superior Court Case No. BS072794
16. City of Arcadia, et al. v. Regional Water Quality Board, et al.
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753,
BS080758, BS080791

Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):

1. Number of Cases: 2

City Attorney Hogin indicated that the Council discussed some, but not all items listed on the Closed Session Agenda due to limited time and took one reportable action. She announced that the City Council unanimously approved the proposed settlement in the case of City of Malibu v. County of Ventura, et al. (Ahmanson Ranch), Ventura County Superior Court Case No. BC277034 which entails the City dismissing its lawsuit if the Conservancy purchases the entire property from Ahmanson to be used for public open space and recreation, and the City Council authorized the City Attorney to execute a release and the agreement to be placed into escrow and delivered should the Santa Monica Mountains Conservancy purchase the entire Ahmanson Ranch property.

APPROVAL OF AGENDA

MOTION Councilmember House moved and Councilmember Jennings seconded a motion to approve the agenda. The motion carried unanimously.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was properly posted on August 29, 2003, with the Amended Agenda posted on September 8, 2003.

ITEM 1 CEREMONIAL/PRESENTATIONS

- A. Proclamation Declaring September as National Alcohol and Drug Addiction Recovery Month

Mayor Kearsley read the proclamation declaring September as National Alcohol and Drug Addiction Recovery Month.

ITEM 2A PUBLIC COMMENTS

John Mazza discussed the Planning Commission's and Interim Zoning Ordinance Revisions and Code Enforcement Subcommittee (IZORACES) review of the

basement ordinance. He requested the Council set a date certain for considering the proposed ordinance.

Dermot Stoker, Vice Chair of the Parks and Recreation Commission, discussed the results of the Shiltz survey. He indicated the survey showed a poor response to the idea of either a sales tax or a benefit assessment district. He further indicated that both issues polled with less than 50 percent favorable responses. He commended the Parks and Recreation Department staff on the growth of recreation programs and participants. He suggested the Council present commendations to the Summer Beach Team. He asked when additional funds would be allocated to Parks and Recreation.

ITEM 2B COUNCIL COMMENTS

Councilmember Jennings discussed the recent meeting of the IZORACES at which they considered the basement ordinance. He stated there were still considerable concerns with the wording. He explained that he and Councilmember Stern requested additional input and suggested a joint meeting between IZORACES and the Architects and Engineer's Advisory Committee.

Councilmember Stern added that the subject was complex and held ramifications for residents.

Mayor Kearsley commended Interim Planning Manager Knight for his service.

Environmental and Community Development Director Peterson introduced Michael Teruya, incoming Planning Manager. He thanked outgoing Interim Planning Manager Ed Knight.

Interim Planning Manager Knight thanked the City of Malibu for the enjoyable experience.

Mayor Kearsley discussed a donation of \$1250 in telephone minutes to the 101st Alpha Company. He encouraged the community to continue writing to the soldiers. He discussed the League of California Cities conference.

Councilmember Stern indicated support for a commendation to the Beach Team. He welcomed Planning Manager Teruya. He commended Interim Planning Manager Knight on his knowledge of the City's laws and his service to the City.

Councilmember House announced the senior citizens event, "Senior Prom," on September 12, 2003 in Calabasas. She commended the Parks and Recreation Department and Commission for its innovative programs. She wished Interim Planning Manager Knight well on his next assignment. She welcomed Mike

Teruya. She indicated support of a commendation for the Beach Team presented at a Council meeting and at the COPS and Council dinner. She asked why the Beach Team staff was reduced. City Manager Lichtig explained that the City decided to reduce the staff due to increased cost of \$75,000.

Councilmember Jennings echoed comments by Councilmember Stern. He welcomed Mike Teruya.

Mayor Pro Tem Barovsky welcomed Mike Teruya and indicated that Ed Knight would be missed by the City. She indicated her support for a commendation for the Beach Team.

ITEM 3 CONSENT CALENDAR

MOTION Councilmember House moved and Councilmember Stern seconded a motion to approve the Consent Calendar. The motion carried unanimously.

The Consent Calendar consisted of the following items:

- A. Previously Discussed Items
 - 1. Second Reading and Adoption of Ordinance No. 258
Staff recommendation: Conduct second reading, unless waived, and adopt Ordinance No. 258, an ordinance amending the Charitable Solicitations Ordinance to limit the permitting requirement to charitable commercial solicitation.
- B. New Items
 - 1. Waive further reading
Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.
 - 2. Approve Warrants
Staff recommendation: Allow and approve warrant demand numbers 22757 through 22949 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 293 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$786,874.94, including ADP payroll voucher numbers 5179099 – 5179108 in the amount of \$99,193.37.
 - 3. Approval of Minutes
Staff recommendation: Approve City Council meeting minutes for the Regular City Council meetings held on April 28, 2003 and

- August 11, 2003 and the Adjourned Regular City Council meeting held on August 5, 2003.
4. Denial of Claim for Damages filed by Edward A. Dandrea
Staff recommendation: Deny claim filed by Edward A. Dandrea.
 5. Denial of Claim for Damages filed by R. Kevin Fisher
Staff recommendation: Deny claim filed by R. Kevin Fisher.
 6. Memorandum of Understanding for Reserve of Proposition C Funds
Staff recommendation: Approve the Memorandum of Understanding (MOU) with the Los Angeles County Metropolitan Transportation Authority (MTA) for the reserve of Proposition C funds for use on the Zumirez Drive Realignment Project.
 7. Approval of Slate of Appointees for the 2003-04 Youth Commission
Staff recommendation: Approve the following slate of candidates for appointment to the Harry Barovsky Memorial Youth Commission for the terms indicated: Anita Hoffman, term ending June 2004; Erin Barlow, term ending June 2005; Elle Sandbloom, term ending June 2005; John Caridad, term ending June 2005; Zackary Drapkin, term ending June 2004; Diva Kass, term ending June 2005; Camden Vilkin, term ending June 2004; Melissa Caridad, term ending June 2005; Chanel Kass, term ending June 2004; Sky Shachory, term ending June 2004; and Ben Hoffman, term ending June 2004.
 8. Amendment to the Consultant Contract for the Preparation of the Environmental Impact Report (EIR) for Malibu Sycamore Grove Office Park and Civic Center Way Retail Park (formerly known as Shultz)
Staff recommendation: Approve Agreement Amendment in the aggregate amount of \$23,110 between Christopher A. Joseph and Associates (CAJA) and the City of Malibu for the preparation of the Environmental Impact Report (EIR) for Malibu Sycamore Grove Office Park and Civic Center Way Retail Park.
 9. Amendment to Agreement for Professional Engineering Services for Las Flores Canyon Creek Restoration
Staff recommendation: Authorize the City Manager to execute Amendment No. 1 to the professional services agreement with CH2M Hill for an amount not to exceed \$281,800 (total contract amount not to exceed \$306,800) to provide professional engineering and design services for the Las Flores Canyon Creek restoration project.

ITEM 4 ORDINANCES AND PUBLIC HEARING

A. Adopt Fees for Public Works Plan Check, Public Works Inspection and Facility Use Fees for Malibu High School and Point Dume School Auditorium

Staff recommendation: 1) Conduct the public hearing; and 2) adopt Resolution No. 03-49 amending Resolution No. 03-20 and establishing a Public Works Plan Check Fee, a Public Works Inspection Fee and Facility Use Fees for Malibu High School and Point Dume School Auditorium.

Administrative Services Director James presented the staff report.

Councilmember House questioned the amount of the Public Works fees. Administrative Services Director James explained that the fees were equivalent to the time for processing.

MOTION Councilmember Jennings moved and Mayor Pro Tem Barovsky seconded a motion to 1) Conduct the public hearing; and 2) adopt Resolution No. 03-49 amending Resolution No. 03-20 and establishing a Public Works Plan Check Fee, a Public Works Inspection Fee and Facility Use Fees for Malibu High School and Point Dume School Auditorium.

Mayor Kearsley discussed the facility use fees. He asked how the fees related to the Joint Use Agreement between the City and Santa Monica/Malibu Unified School District. Parks and Recreation Director Adams explained that the fees were for non-City use of the facilities.

The motion carried unanimously.

B. ADOPTION OF RESOLUTIONS AND ORDINANCES FOR THE PROPOSED WINDSAIL DEVELOPMENT AGREEMENT – The proposed project consists of an application to reconstruct the former Windsail Restaurant into a new 9,555 square foot restaurant and day spa facility. In addition to the requested Development Agreement, the application includes requests for an amendment to the General Plan Land Use Map and Zoning Map from Multi-Family Residential (MF) to Visitor Serving Commercial (CV); a Conditional Use Permit for a restaurant and bar facility; a Variance to allow parking in the front yard setback area; a Variance for a reduction in the amount of required landscaping; and a Demolition Permit to tear down the existing 7,500 square foot restaurant building. APPLICANT: Weintraub Financial; OWNER: Weintraub Financial; LOCATION: 22706 Pacific Coast Highway; SITE ACREAGE: 1.11 Acres; ZONING: Existing: Multi-Family Residential; Proposed: Commercial Visitor Serving (CV-1) (Continued from August 11, 2003)

Staff recommendation: 1) Adopt Resolution No. 03-40 adopting Mitigated Negative Declaration No. 02-002 for a Development Agreement to construct a 9,555 square foot Restaurant/Bar and Day Spa Facility on property at 22706 Pacific Coast Highway (Weintraub Financial); 2) Adopt Resolution No. 03-38 approving General Plan Amendment 02-001 to Change the General Plan Land Use Map from Multi-Family Residential to

Commercial Visitor Serving on a 1.1 Acre Property Known as Assessor Parcel Numbers 4452-004—38, 040, and 042, Located at 22706 Pacific Coast Highway (Weintraub Financial); 3) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 255 an Ordinance of the City of Malibu Adopting Zoning Map Amendment 02-001 Amending the Zoning Map from Multi-Family Residential (MF) to Commercial Visitor Serving (CV-1) on a 1.1 Acre Property Known as Assessor Parcel Numbers 4452-004-038, 040, and 042, Located at 22706 Pacific Coast Highway (Weintraub Financial); 4) Adopt Resolution No. 03-39 Approving Conditional Use Permit No. 02-006, Variance Nos. 02-014 and 02-015, and Demolition Permit No. 02-005 for a New 9,555 Square Foot Restaurant/Bar and Day Spa Facility at 22706 Pacific Coast Highway (Weintraub Financial); 5) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 256 an Ordinance of the City of Malibu, California, Approving a Development Agreement Between the City of Malibu and Weintraub Financial Services, Inc.; and 6) Direct staff to schedule second reading and adoption of Ordinance Nos. 255 and 256 on September 22, 2003.

Senior Planning Consultant Gorham presented the staff report.

City Attorney Hogin discussed proposed changes to the development agreement including advance notice for room reservations and number of free parking spaces.

In response to Councilmember House, Senior Planning Consultant Gorham discussed the hours of availability for the meeting (community) room.

In response to Mayor Pro Tem Barovsky, Senior Planning Consultant Gorham discussed the square footage allocated for the community room.

Councilmember Jennings stated the City Attorney was asking for Council direction on the number of free spaces reserved for the community room.

John Mazza expressed concern regarding the proposed parking for the project. He urged the Council to reconsider the parking allocation. He urged the Council to not set a precedent allowing the applicant to do his own analysis of the proposed public benefit.

Ryan Embree discussed the \$400,000 donation. He discussed the proposed parking plan including valet service. He suggested 12-14 hours notice be required for use of the community room. He suggested the City not advance funds until received.

Richard Scott indicated the proposed parking would meet the requirements of the Code. He discussed the current Parks and Recreation Department facility use process including 14-day notice. He requested 48 hour notice be provided for use of the facilities.

Norm Haynie stated Mr. Weintraub was taking a tremendous risk and the proposed public benefit was well worth it to the City.

Councilmember Stern stated 24 hours notice for meetings without food service and 48 hours notice for meetings with food service (24/48 hour notice) was appropriate for advance notice for use of the community room. He proposed 16 parking spaces be provided free of charge for use by community room visitors.

Mayor Pro Tem Barovsky stated that 48 hours notice for food service and 24 hours notice for a meeting time was reasonable. She questioned whether meetings could continue to the next day. City Attorney Hogin stated a provision could be added allowing for continuance of meetings. Mayor Pro Tem Barovsky indicated support for requiring 16 parking spaces free of charge.

Councilmember Jennings indicated support for the 24/48 hour notice periods for meetings. He agreed that 16 parking spaces was a reasonable compromise.

In response to Mayor Pro Tem Barovsky, Mr. Embree stated he did not see the basis for including the City's ability to advance fees to the School District and it was not good public policy. City Attorney Hogin explained that it clarified that the School District would not be entitled to an additional payment at the anniversary date.

Councilmember House suggested the community room not be open on legal holidays. She indicated support for the 24/48-hour notice periods. She expressed concern regarding limiting free parking spaces and divisiveness amongst meeting attendees.

Councilmember Stern suggested leaving agreement as is, but having an internal policy of not booking the room on legal holidays.

Mayor Kearsley expressed concern with limiting parking to 16 spaces. He suggested 16 free spaces with a condition that meeting attendees could take a shuttle from the hotel to the restaurant. He stated that the 24/48-hour notice period was reasonable. He indicated that a 13-car queue

would cause problems. He also stated that the size of the restaurant was too large.

Mayor Pro Tem Barovsky stated she would be inclined to reduce free parking to 10 spaces if community members could make use of the shuttle.

Mr. Scott stated there was no guarantee that the owner of the restaurant and the owners of the shuttle service would be the same. He also indicated that there were issues with Americans with Disabilities Act (ADA) requirements and the shuttle.

Mayor Pro Tem Barovsky indicated support for a minimum of 16 free spaces if the shuttle was not available.

Councilmember Jennings asked if there was interest in more spaces being available when the restaurant uses were slower.

MOTION Councilmember Jennings moved and Councilmember Stern seconded a motion to 1) Adopt Resolution No. 03-40 adopting Mitigated Negative Declaration No. 02-002 for a Development Agreement to construct a 9,555 square foot Restaurant/Bar and Day Spa Facility on property at 22706 Pacific Coast Highway (Weintraub Financial); 2) Adopt Resolution No. 03-38 approving General Plan Amendment 02-001 to Change the General Plan Land Use Map from Multi-Family Residential to Commercial Visitor Serving on a 1.1 Acre Property Known as Assessor Parcel Numbers 4452-004—38, 040, and 042, Located at 22706 Pacific Coast Highway (Weintraub Financial); 3) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 255 an Ordinance of the City of Malibu Adopting Zoning Map Amendment 02-001 Amending the Zoning Map from Multi-Family Residential (MF) to Commercial Visitor Serving (CV-1) on a 1.1 Acre Property Known as Assessor Parcel Numbers 4452-004-038, 040, and 042, Located at 22706 Pacific Coast Highway (Weintraub Financial); 4) Adopt Resolution No. 03-39 Approving Conditional Use Permit No. 02-006, Variance Nos. 02-014 and 02-015, and Demolition Permit No. 02-005 for a New 9,555 Square Foot Restaurant/Bar and Day Spa Facility at 22706 Pacific Coast Highway (Weintraub Financial); 5) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 256 an Ordinance of the City of Malibu, California, Approving a Development Agreement Between the City of Malibu and Weintraub Financial Services, Inc., amended to require 24 hours advance notice without food and 48 hours advance notice with food for reservation of the community room, including an exception for continued meetings and requiring 16 free parking spaces for patrons of the community room; and 6) Direct staff to

schedule second reading and adoption of Ordinance Nos. 255 and 256 on September 22, 2003. The question was called and the motion carried 4-1, Mayor Kearsley dissenting.

- C. GENERAL PLAN AMENDMENT NO. 02-002; ZONING MAP AMENDMENT NO. 02-002; NEGATIVE DECLARATION NO. 02-003
An Amendment to the Malibu General Plan Land Use Map from Rural Residential - 20 to Rural Residential - 5, and an Amendment to the Malibu Zoning Map from Rural Residential - 20 to Rural Residential - 5, on 68 Acres and Open Space Dedication of 57 Acres along the North side of Latigo Canyon Road, approximately 4,000 feet North of the Latigo Canyon/Pacific Coast Highway Intersection. APPLICANT: City of Malibu; OWNER: George J. Rubens; SETTLEMENT: George J. Rubens, as trustee of the George J. Rubens and Yvonne M. Rubens Family Trust, et al, and the City of Malibu; LOCATION: North side of Latigo Canyon Road, approximately 4,000 feet North of the Pacific Coast Highway/Latigo Canyon Road intersection; GROSS ACREAGE: 68 acres (Continued from June 23, 2003)

Staff recommendation: (1) Adopt Resolution No. 03-25 Adopting Negative Declaration No. 02-003 for General Plan Amendment 02-002 to Change the General Plan Land Use Map From Rural Residential 20 to Rural Residential 5 and Zoning Map Amendment No. 02-002 to Change the Zoning Map From RR-20 to RR-5 on 68 Acres of Land Known as Assessor Parcel Numbers 4459-003-007 and 008, Generally Located on the North Side of Latigo Canyon Road, Approximately 4,000 Feet From the Latigo Canyon Road / Pacific Coast Highway Intersection (Rubens Family Trust); (2) Adopt Resolution No. 03-26 A Resolution of the City Council of the City of Malibu Approving General Plan Amendment 02-002 to Change the General Plan Land Use Map From Rural Residential 20 to Rural Residential 5 on 68 Acres of Land Known as Assessor Parcel Numbers 4459-003-007 and 008, Generally Located on the North Side of Latigo Canyon Road, Approximately 4,000 Feet From the Latigo Canyon Road / Pacific Coast Highway Intersection (Rubens Family Trust), and (3) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 241, An Ordinance of the City of Malibu Adopting Zoning Map Amendment No. 02-002 to Change the Zoning Map From RR-20 (One Unit Per Twenty Acres) to RR-5 (One Unit Per Five Acres) on 68 Acres of Land Known as Assessor Parcel Numbers 4459-003-007 And 008, Generally Located on the North Side of Latigo Canyon Road, Approximately 4,000 Feet From the Latigo Canyon Road / Pacific Coast Highway Intersection (Rubens Family Trust); and (4) Direct staff to schedule second reading and adoption of Ordinance No. 241 for the September 22, 2003 City Council meeting.

Senior Planner Albright presented the staff report.

Mayor Pro Tem Barovsky stated new alternatives should go back to the Planning Commission.

City Attorney Hogin stated she had approached counsel for the applicant as to whether they wanted to proceed with the original proposal, which they agreed to.

Councilmember House stated she was not interested in hearing the alternatives without it going through the Planning Commission.

Paul Rubens deferred his time to Marissa Coughlan.

Peter Rubens deferred his time to Marissa Coughlan.

Dave Rosell deferred his time to Marissa Coughlan.

Marissa Coughlan, representing the applicant, stated they were only discussing a zone change from RR20 to RR5. She indicated agreement with City Attorney Hogin's recommendation for a conservation/open space easement in perpetuity. She explained the drainage situation on the property.

Sherri Browning deferred her time to Patt Healy.

Candace Brown deferred her time to Patt Healy.

Ralph Hydle deferred his time to Patt Healy.

Patt Healy stated the zone change was purely to settle a lawsuit and not for legitimate purposes. She stated RR-20 zoning was appropriate. She stated the Malibu Coalition for Slow Growth has indicated that there was no basis for the lawsuit. She discussed potential development under the 5-acre zoning. She discussed ecological harm that could be caused by the project. She encouraged the upzoning be denied and the owner be allowed to continue to litigate.

Dixie Moore addressed the Council in support of the project. She discussed the speakers in opposition to the project.

Tom Bates indicated support for the proposed amendment.

David Myers reminded the Council of earlier comments about how Malibu was a special place. He urged the Council to be careful in making decisions about land use. He expressed concerns regarding traffic safety.

Frank P. Angel, representing Latigo Preservation Association, Sierra Club and Save Open Space Santa Monica Mountains, stated the matter should have gone back to the Planning Commission. He expressed concern regarding the fragmented approach to land use planning. He stated the Council had to determine if the upzoning was done for upcoming residential development. He requested the Council add a condition that the applicant be responsible for attorney's fees if it approved the project.

Mary E. Prismon deferred her time to Lucille Keller.

Susan Swenson deferred her time to Lucille Keller.

Anthony J. McEwen deferred his time to Lucille Keller.

Lucille Keller, Malibu Township Council, indicated support for retaining RR-20 zoning. She provided an overview of the property zoning, taxes and assessments. She urged the Council to reject the Rubens' proposal. She urged the Council to read the 1995 research memo on this case by Gregg Kovacevich. She urged the Council to deny the request.

Trudy King was not present at the time of the hearing.

John Mazza stated the land proposed for the conservation easement would be open space because it was "junk land." He stated the land was unbuildable.

Donald B. Kowalewsky stated rezoning would invite subdivision. He discussed geological problems on the property. He questioned how the property owner would get from Latigo Canyon Road to the building sites.

Jill Kalter was not present at the time of the hearing.

Sharon Prey was not present at the time of the hearing.

Jefferson Wagner, President of the Latigo Canyon Preservation Association, stated they did not oppose the Rubens' family home or second home. He urged the Council to listen to the Planning Commission and Latigo Canyon residents.

Melanie Beck, National Park Service, recommended an EIR be prepared for the proposal. She stated the Park Service would like to see the property protected. She stated there was funding for the National Park Service to buy the property, but it was necessary to conduct an appraisal.

Paul Shoop displayed the flat portions of the property. He stated the property could be reached and developed. He discussed the Water District assessment on the property. He requested a partial return to the zoning when the Water District assessment was imposed.

Councilmember House requested a recess.

City Attorney Hogin admonished the Council that the public hearing was still open and asked that no one discuss the matters that are pending with the Councilmembers during the recess.

Mayor Pro Tem Barovsky encouraged the public to remain for Council comments.

RECESS Mayor Kearsley called a recess at 8:42 p.m. The meeting reconvened at 8:58 p.m. with all Councilmembers present.

Mayor Pro Tem Barovsky discussed the outcome of the Lunita Pacific litigation. She discussed the potential outcome of litigation on this case. She discussed potential development on the property under current law and if the property was rezoned. She stated the open space dedication was a public benefit. She stated she would listen to her colleagues and then decide.

Councilmember House discussed restrictions from development in Environmentally Sensitive Habitat Areas (ESHA). She stated the staff report indicated the zone change would result in an additional 2 lots and provide 57 acres for open space purposes. She stated she did not want this land use decision decided by the courts. She indicated support for the proposal.

Councilmember Jennings agreed that the land was too rugged, too steep and should never be developed, but the property was already 4 legal lots. He stated there was no such thing as a unbuildable lot. He discussed the Sweeney property. He discussed the property owner's rights to develop the property. He stated he would be delighted to see the National Park Service purchase the property. He discussed the development potential under the proposed settlement agreement. He expressed concern regarding the Coastal Slope Trail and asked if the City could seek

dedication of the Coastal Slope Trail. Ms. Beck explained the location of the Coastal Slope Trail.

In response to Councilmember House, Ms. Beck stated there was not yet a trail through the property, but the proposed alignment went through the Rubens' property.

In response to Councilmember Jennings, Ms. Coughlan stated there was no trail and that it was a wish list by NPS.

In response to Councilmember Jennings, Ms. Beck explained the process of trail planning.

Councilmember Jennings suggested the possibility of continuing the hearing to give the applicant the opportunity to consider a trail dedication.

Councilmember House indicated support for the recommendation.

Mayor Pro Tem Barovsky strongly urged the applicants to consider the trail dedication as a public benefit.

City Attorney Hogin requested the map be provided to the applicant. She clarified the proposed donation in the settlement agreement.

Councilmember Jennings stated it made sense to have the property line between the dedicated and undedicated portion run down the watershed or the ridgeline to avoid the problems discussed in the staff report. He stated he was not interested in changing the donated acreage.

MOTION Councilmember Jennings moved and Mayor Pro Tem Barovsky seconded a motion to continue the hearing to September 22, 2003.

Mayor Pro Tem Barovsky asked if the map that was to be voted on was the original deal and not the two proposed alternatives. Mayor Pro Tem Barovsky stated a map may be developed retaining acreage related to topography.

The question was called and the motion carried unanimously.

ITEM 5. OLD BUSINESS

None.

ITEM 6. NEW BUSINESS

None.

ITEM 7. COUNCIL ITEMS

A. Public Access on Private Beach Areas with Public Easements (Mayor Pro Tem Barovsky)

Mayor Pro Tem Barovsky presented the report. She expressed concern regarding the number of deputies arriving at the incident with Sara Wan.

Captain Martin discussed the sequence of events that occurred on Broad Beach.

Mayor Pro Tem Barovsky expressed concern with Sheriffs utilizing resources to figure out what private property and public property was on the beach. She stated it was her understanding that Sara Wan had requested a meeting to discuss Malibu's policy.

Captain Martin stated Bill Burke contacted Sheriff Baca requesting a meeting with Sara Wan and the Sheriff. He explained that Sheriff Baca was unable to meet and delegated that to Chief Tyler. He stated Chief Tyler scheduled a meeting with Sara Wan as to how the Sheriff's Department handled public access on private beaches on Monday, September 15.

Mayor Pro Tem Barovsky stated Malibu was the only coastal city on the mainland that the Sheriffs represent. She suggested a City representative attend the meeting. Captain Martin stated City Manager Lichtig was insistent that a City representative be present. City Manager Lichtig stated she would attend that meeting.

Councilmember House suggested the deputies have a definitive map of beach access and deeds. Captain Martin stated the trespassing law was difficult because the boundaries were not known. He stated no trespassing arrests were made in the last 5 years. He explained the owner of the property would have to make a private person's arrest for trespassing. Councilmember House discussed the offers to dedicate in the Broad Beach area and its inconsistent line. Captain Martin stated the line was not contiguous.

Councilmember House requested the Sheriff's Department write a letter to the Coastal Commission requesting a definitive map showing deeded land and access or that the City request with Sheriff's Department joining.

Captain Martin expressed concern with deputies having to interpret boundary line maps. Councilmember House stated it was important to determine public property and allow people to enjoy the beaches.

Councilmember Jennings discussed easements on the beach and public access. He stated it would be virtually impossible for a deputy to determine whether a beach goer was in a permitted place or on private property where access was not permitted. He agreed that the appropriate way was for the property owner or the property owner's representatives to make a citizen's arrest.

Mayor Pro Tem Barovsky reiterated that a property owner could enact a citizen's arrest if a person was trespassing on private property. Captain Martin explained the process for trespassing arrests. Mayor Pro Tem Barovsky stated a citizen could be liable for false arrest. Captain Martin indicated that the Sheriffs would advise the citizen of that fact.

Councilmember Stern discussed the process of losing private property rights with continual use over 5 years.

Mayor Kearsley explained the assertion of prescriptive easement. He stated the problem was with the perceptions of the security guard. He asked if the security guards could make a citizen's arrest on behalf of the property owner. In response to Mayor Kearsley, Captain Martin stated not unless they had a letter of agency from the homeowner.

Councilmember House suggested informing the homeowners to educate security guards about the facts.

Councilmember Jennings clarified that he was commenting on people walking or sitting on beaches near private property.

Councilmember House suggested the security guards on Broad Beach be better informed.

Mayor Pro Tem Barovsky provided suggestions regarding the meeting with the Sheriff's Department, Sara Wan and the City. She suggested that calls regarding sitting or walking on the beach should be low priority and the burden should be placed on the property owner to make citizen's arrest.

City Manager Lichtig stated she heard the Council reaffirm its support for safe access to the beach for 14 million visitors.

Mayor Pro Tem Barovsky suggested pointing out that there has not been 1 arrest for trespassing in the City of Malibu in the last 5 years.

City Manager Lichtig stated she heard the Council indicate that it would like security guards to be better informed in terms of what the process is in these situations. She also stated that she heard the Council indicate its priorities that beach access and property rights are lower priority than traffic safety on the Highway. She stated she needed to have a conversation with Captain Martin regarding deputy training for next summer.

Councilmember House suggested pointing out the fact that Malibu is the only city that has added a public beach in the last 20 years.

Mayor Kearsley suggested pointing out that the City pays for the Beach Team to protect visitors to the beach.

Mayor Pro Tem Barovsky requested City Manager Lichtig emphasize that this Council has supported and welcomed visitors to Malibu.

Councilmember Stern reminded the Council that 2 of the 5 Councilmembers sit on the L.A. County Beach Commission, the Commission that oversees 14 to 15 million beach visitors per year and that this was the only incident.

Councilmember House explained that 10 years ago, Zuma was becoming a gang beach, and Malibu turned it around because it was important to have a family beach. She expressed gratitude to the Beach Team

Mayor Pro Tem Barovsky thanked Captain Martin for coming down.

CONSENSUS

By consensus, the Council determined to reopen public comments.

ITEM 2A PUBLIC COMMENTS (Continued)

Paul Grisanti presented an alternative plan for the Chili Cook-Off site.

The Council thanked Mr. Grisanti for the presentation.

ADJOURN At 10:05 p.m., Mayor Pro Tem Barovsky moved and Councilmember House seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of

the City of Malibu on October 27, 2003.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)